



EXHIBIT 4
DATE 1-21-11
HB 68
City of Bozeman
City Attorney's Office

Greg Sullivan, City Attorney
Tim Cooper, Staff Attorney
Susan L. Wordal, Staff Attorney
Kyla Murray, Staff Attorney
Annie Rooney, Staff Attorney

January 21, 2011

To: Montana Legislature House Health and Human Services Committee
FR: Greg Sullivan, City Attorney, Bozeman, Montana

RE: Comments on HB 69

My name is Greg Sullivan. I am the City Attorney for the city of Bozeman, Montana. I speak to you today representing the city of Bozeman.

During the past two years the city of Bozeman has worked with the Bozeman community to develop and implement policies and code provisions regulating the use of medical marijuana. Last summer, the Bozeman City Commission adopted provisions in the Bozeman Municipal Code to address business licensing and zoning requirements for medical marijuana. In addition, the Commission adopted a prohibition on smoking, displaying, or consuming medical marijuana in public. These provisions were adopted and are being implemented under the city's self-governing powers and general zoning authority.

Except for a few isolated circumstances, the Bozeman code provisions are working. As such, the city of Bozeman respectfully requests you recognize and uphold the ability of local governments to develop policies and regulations to fit local circumstances. I believe HB 68, primarily through the provisions in Section 7, does so.

I want to briefly discuss the impact of HB 68 on self-governing powers local governments. HB 68 limits local governments, including those with self-governing powers, from prohibiting the use of medical marijuana. While the city of Bozeman has taken the route of allowing the use of medical marijuana through standards and regulations, currently self-governing powers local government do have the authority to prohibit the use of medical marijuana. If the Legislature intends to restrict all local governments, including those with self-governing powers, from prohibiting medical marijuana, I ask the Legislature make the policy clear and unequivocal in the law. Section 1 of HB 68 does so.

I want to briefly speak to three other sections of the bill which affect local government: Sections 25, 27, and 36. Section 36 removes the affirmative defense from the Act. This has been a hindrance to prosecuting cases related to medical marijuana. Law enforcement throughout the state, including in Bozeman, supports the repeal of the affirmative defense.

Section 25 provides distance restrictions on new licenses issued by the state. Subsection 3 of this section authorizes a local government to vary the distances and the types of institutions listed in the section to which the distance requirement applies. These provisions provide flexibility for local governments to address medical marijuana within their communities. This section does not limit in any way a local government's authority to apply distance restrictions to other institutions such as parks, religious institutions, etc. I suggest an minor edit to subsection (1)(d) by adding the phrase "cultivated or manufactured" in the first and last lines immediately following the word "sold." The proposed amendment is included with my written statement.

Section 27 of the bill addresses the ability of a licensing to transfer the ownership or location of a licensed business. This section also affects local government's authority to regulate medical marijuana. For example, the city of Bozeman has business licensing provisions addressing medical marijuana. These include requirements for storefronts to have alarms and safes if those businesses store medical marijuana on-sight overnight. The city of Bozeman requires all caregivers and employees affiliated with a business licensee to be listed on the license application. *The city also requires new licenses for those who wish to transfer ownership or transfer locations.* The language in this section may conflict with the city of Bozeman's current practice regarding new business licenses for transfer of ownership or location. As such, the city of Bozeman suggests an amendment to subsection (1) of this section to clarify that the state licensing authority *cannot approve a transfer of ownership or a transfer of location if doing so would conflict with a local government ordinance or resolution adopted pursuant to Section 7.* The proposed amendment is also included with my written statement.

Thank you for the opportunity to participate during the interim committee's work group and today. I am available for questions.

SUGGESTED AMENDMENT TO SECTION 25:

NEW SECTION. Section 25. Restrictions applicable to new licenses -- local government

authority. (1) The state licensing authority may not accept or approve an application for a license:

(a) if the application involves a location that is the same as or within 1,000 feet of a location for which the state denied an application for the same class of license within the 2 years immediately preceding the date of application if the denial was because of the nature of the use or other concern related to the location;

(b) until it is established that the applicant is or will be entitled to possession of the premises through a lease, rental agreement, or other arrangement for possession or by virtue of ownership of the premises;

(c) for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable local government zoning laws; or

(d) if the building in which medical marijuana is to be sold, cultivated or manufactured is located within 1,000 feet of a school, a family or group day-care home as defined in 52-2-703, an alcohol or drug treatment facility, or the principal campus of a postsecondary school or seminary. The distance must be measured in a straight line from the nearest property line of the land used for a school, day-care home, alcohol or drug treatment center, campus, or seminary to the nearest portion of the building in which medical marijuana is to be sold, cultivated or manufactured.

(2) The provisions of this section may not affect the renewal or reissuance of a license or apply to a license in effect if the licensee was actively doing business before the principal campus of a postsecondary school was built.

(3) A local government may by ordinance or resolution vary the distance restrictions imposed by this section or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction.

SUGGESTED AMENDMENT TO SECTION 27:

NEW SECTION. Section 27. Transfer of ownership -- change of location or manager.

(1) A license granted pursuant to this chapter may be transferred upon application to the state licensing authority on forms prepared and furnished by the state licensing authority. In determining whether to permit a transfer of ownership or change of location, the state licensing authority shall consider the requirements of this chapter and rules adopted pursuant to this chapter. The state licensing authority shall not approve a transfer of ownership or change of location if doing so would conflict with a local government ordinance or resolution adopted pursuant to [Section 7].

(2) A licensee shall report a proposed transfer or change of ownership or change of location to the state licensing authority 30 days before a transfer or change of ownership or change of location occurs.

(3) A report is required for transfers of capital stock of any corporation.

(4) Upon approval from the state licensing authority, and subject to (1), a licensee may move change the licensee's permanent location only to any place location in the same city, town, or county for which the license was originally granted. ~~Before granting the request, the state licensing authority shall consider whether the proposed change of location would conform with the city, town, or county's zoning requirements or any regulatory decisions made pursuant to [section 7].~~

~~(5)~~ (4) A licensee shall manage the licensed premises or employ a separate and distinct manager on the premises. The licensee shall report to the state licensing authority:

(a) the name of the manager; and

(b) a change in manager 30 days prior to the change.